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| APPLICATION NO. | FILED DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|------------|----------------------|---------------------|---------------------|
| 10/077,427 | 02/15/2002 | Sim M. Jyawook | 67,064-001 | 3582 |
| 26096 | 7590 | 10/23/2003 | | EXAMINER VO. HAI |
| CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009 | | | ART UNIT 1771 | PAPER NUMBER |

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/077,427 | JYAWOOK ET AL. |
| | Examiner Hai Vo | Art Unit 1771 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office after than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 and 15-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152) .
- 6) Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrix (US 6,458,301) in view of Chen et al (US 6,602,064).
Hendrix teaches a weatherseal having the gripping portion and sealing portion made of foamed thermoplastic vulcanizates (column 4, lines 15-33). Hendrix teaches the gripping and sealing portions having a cross sectional dimension that selectively varies along a length of the weather stripping (figures 2-4). Hendrix does not specifically disclose the entire weather stripping formed from a microcellular material. Chen discloses that microcellular materials have smaller cell sizes and higher cell densities than conventional polymeric foams. Chen teaches that the unique cell structure of microcellular foams leads to several advantages over the conventional foams including improved properties and appearance (column 2, lines 50-60), which is important to the invention of Hendrix. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the cellular foamed material in Hendrix by a microcellular foamed material as taught in Chen motivated by the desire to provide the foam having improved properties and appearance.

With regard to claims 4-6, and 17-19, Chen teaches a microcellular foamed material having a cell size less than 10 microns and a cell density less than 10^6 cells per cubic centimeter (column 2, lines 55-60). Chen also discloses such a variable would have been recognized by one skilled in the art as dependent upon the intended use of the product (column 7, lines 30-35). As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the microcellular foam material having the cell size and cell density instantly claimed since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

In re Aller, 105 USPQ 233.

With regard to claim 15, it is a product-by-process limitation not as yet shown to produce a patentably distinct article. It is the examiner's position that the article of Hendrix as modified by Chen is identical to or only slightly different than the claimed article prepared by the method of the claim, because both articles are formed from the same materials, having structural similarity (the sealing portion and base portion made of a microcellular foamed material). It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with Hendrix/Chen.

Response to Arguments

3. Applicant's arguments with respect to claims 1-7 and 15-20 have been considered but are moot in view of the new ground(s) of rejection.
4. The art rejections in the Office Action mailed on 08/04/2003 have been overcome by the present arguments (the first paragraph at page 4 of the amendment received on 09/23/2003). Applicants also argued that the combination of Hendrix and Park will not work due to differences in the process steps performed in Hendrix and Park. This argument is not commensurate in scope with the product claims since their argument should be directed to a product in terms of structure rather than process of making it.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on M,T,Th, F, 8:30-6:00 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1000
1700

Daniel Zinker